ADMINISTRATION OF CRIMINAL JUSTICE ACT 2015: ITS RELEVANCE TO THE LAW CLINICS IN NIGERIA

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ABSTRACT

The EBSU Law Clinic which is the students' practical law firm was established in 2006 in the Faculty of Law Ebonyi State University, under Directorate of Clinical Legal Education of the University. The University established the Clinical Legal Education (CLE) programme to boost its system of law training in practical skills development which was hitherto non-existent in Nigeria. Prison congestion is one of the key challenges of criminal justice administration in Nigeria, Thus, virtually all law clinics in Nigeria focus significant part of their pro bono work on criminal justice probably due to the high rate of pre-trial detention and lack of access to justice in Nigeria which is currently at 51,141(68%). Hence for the purpose of this work, EBSU Law Clinic was used as a model for law clinics in Nigeria. The Administration of Criminal Justice Act 2015 came into force in the Federal Republic of Nigeria in May 2015. Since then, not much has been done to transmit the novel provisions of the Act to the grassroots for smooth criminal justice administration in Nigeria, especially the police, the prisons, and the bar. This paper therefore discussed the newly enacted Administration of Criminal Justice Act 2015 and the relevance of the act to the law clinics specifically, and clinical legal education generally. This paper is aimed at being one of the vehicles of dissemination of the novel areas and innovations introduced by the ACJA 2015, and to make the Act known to the people and assist them to understand its sacrosanct provisions. In conducting this research, doctrinal and conceptual research method was utilised. It was found, inter alia. that the Administration of Criminal Justice Act 2015 can do a whole lot to further enhance Access to Justice and implementation of human rights in the area of criminal justice as it affects the less privileged which forms the core target group of law clinics. In addition, the students would learn by doing as a cardinal objective of clinical legal education; and for the delivery of social justice and community service which is central to the mandate of clinical legal education. It was concluded that the strict application of ACJA 2015 will ultimately reduce the rate of pretrial detention while giving quality access to Justice in Nigeria; and law students being part of its implementation will

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be best beneficiaries as it will sharpen their knowledge, skills and values in criminal justice administration.

INTRODUCTION

The Faculty of Law Ebonyi State University, Abakaliki was established at the beginning of the 1999 session. It was established to meet the yearnings of the teaming population of Ebonyi people, which had long suffered dearth of legal manpower and others who want to have access to legal education. Over the years, the Faculty has designed and redesigned its curriculum to be in consonance with current trends in legal education globally. At the moment, the Faculty has four departments, from its two-department structure at inception. They include; department of Public and Private Law; Department of Commercial and Industrial Law; Department of Jurisprudence and International Law, and the Directorate of Clinical Legal Education. The *EBSU Law Clinic* which is the students' practical law firm is under Directorate of Clinical Legal Education of Ebonyi State University. The University established the Clinical Legal Education (CLE) programme to boost its system of law training in practical skills development which was hitherto non-existent in Nigeria.

The EBSU Law Clinic commenced preliminary operation in October 2004. It however, resumed clinical law training with the ideals of Clinical Legal Education on June 25, 2006 when the clinic received University Senate's approval. Clinical Legal Education (CLE) as a concept and teaching methodology is directed towards acquisition of functional learning. Simply put therefore, the Law Clinic is to law students what the University Teaching Hospital is to medical students. The curriculum as recently approved by NULAI in October 2006 is a 4semesters-based, designed for the 4th and 5th year LL. B programme.

It has learning objectives for each subject and there is emphasis on the use of interactive teaching methods and clinical approaches like simulations, role plays, video clips, exercises, brainstorming, tutorials, assignments, moots/mock trial, skills competitions, clinics, site visits, internships/ attachments, street law programmes, teach back, increased use of IT and teaching aids etc. The programme is thus aimed at equipping the students with problem solving skills, legal analysis and reasoning skills, communication skills, interview and counselling skills, trial preparation and trial advocacy skills. The clinic helps to produce law graduates with sound knowledge of law and who possesses the necessary skills to tackle the problems of the society through the law. EBSU Law Clinic meets the above targets through a well-structured curriculum which it is presently operating.

The introduction of CLE has made positive impact not just to the students but also to the university and its immediate communities, as it accords the university the opportunity to deliver corporate social responsibility to the surrounding towns and villages, like Abakaliki, Afikpo, Ikwo etc. Students trained under the clinic have won laurels at national competitions and excelled at the Nigerian Law School.

Other Community Service Projects of EBSU Law Clinic

EBSU Public Interest, Access to Justice and Street Law Programmes: The NUC current minimum academic standards in law and the draft benchmarks and minimum academic standards in law published in August 2004 and Network of University Legal Aid Institutions (NULAI) guidelines 2006 make provisions for simulative and practical legal training.

Thus, the essence of the non-examinable practical training requires that "A community-based course: moot court, prison services; community legal assistance to the poor, minority and the under-privileged should be introduced". This is mainly clinic-based and constitutes the major bulk of the service aspect of the clinic. The Clinic operates as a service centre to handle legal matters for indigent people around the University environment and entire Abakaliki metropolis.

Matters like, Family Law and Domestic Violence, Human Right, HIV/AIDS Right, Environmental Right, Tenancy matters; etc. are handled in the Clinic, particularly for the indigent. Publicity for the clinic is through, the electronic and print media. Others include addressing village / town association, religious organizations like churches. The communities service outreach programmes are done through:

a) Street law programmes to schools, hospitals, markets, parks etc.
b) Outreach programmes on human rights, especially to vulnerable groups like women and children.
c) Pro bono and free legal aid services to the poor and illiterate forgotten lot.

The goals of the law clinic's community service programmes include *inter alia*: -

1. To train students on practical lawyering
2. Practical client counselling skills
3. Moot court practice.
4. To render free legal services to the indigent people around the university and the state.
5. To achieve citizenship education and rights sensitization.
6. To train the students to be responsive to the needs of their immediate environment.
7. To carry out the different projects of the clinic, through her specialized units like EBSU HIV/AIDS Initiative (EBSUAI). EBSU Environmental Protection Initiative (EBSUEPI), EBSU Family Law Centre (EBSUFLC) etc.

To update in contemporary legal research and skills development the directorate of EBSU Law Clinic has participated in conferences and training workshops in Durban, Johannesburg, (South Africa), Cardiff Wales, London, Newcastle (United Kingdom), Manila (Philippines), Toronto (Canada), the Netherlands, Olomouc Czech, New York and Stanford USA, Etc.

WHAT ARE LAW CLINICS AND WHAT IS THEIR ROLE IN CRIMINAL JUSTICE ADMINISTRATION?

Law Clinics and Clinical Legal Education

A legal clinic (also law clinic or law school clinic) is a law school programme providing hands-on-legal experience to law school students and services to various clients and communities. Clinics are usually directed by clinical professors (Blacks, 1990: 254). Legal clinics typically do *pro bono* work in a particular area, providing free legal and allied services to clients. A legal clinic or law clinic is a non-profit law practice serving the public interest. Legal clinics originated as a method of practical teaching of law school students, but today they encompass also free legal aid with no academic links (Yakasai, 2016). Law clinics are vital tools in actualising and driving a functional clinical legal education curriculum. The question therefore arises, *what is clinical legal education*?

Clinical legal education refers to 'programmes where students act for real clients in the handling of their real legal problems' in law schools (Campbell, 1991: 121). According to Giddings,

> [the] term clinical legal education has been used quite loosely … Students and practicing lawyers tend to relate clinical legal education to work with real clients or to 'skills' … Other law teachers usually give clinical legal education a broader meaning, focusing on the use of teaching methods other than traditional lectures and seminars (Giddings, 1999: 34-35).

Over the past twenty years, clinical legal education has developed globally (Rhode, 2003: 321) to encompass a variety of approaches, with the common element being real life experiences in the training of lawyers. It is a pedagogy that emphasizes experiential learning in law faculties and law schools. In a Clinical Legal Education curriculum, students learn by doing and by reflecting (Brayne, Duncan and Grimes, 1998; Giddings, 2013). These include methodologies embodying problem-solving, mock trials, role plays, street lawyering, mooting, simulation, internships and placement programmes. In summary, clinical legal education is skill-based system of law training, requiring feedbacks, reflection and knowledge application (Smith, 2003–04; Evans, Cody, Copeland, Giddings, Joy, Noone and Rice, 2017). Thus,

> Clinical legal education confronts law students with the realities, demands and compromises of legal practice. In so doing, it provides students with real-life reference points for learning the law. Clinical legal education also invites students to see the wider context and everyday realities of accessing an imperfect legal system, enabling them to integrate their learning of substantive law with the justice implications of its practical operation (Evans, A. *et al,* 2017; Evans, Cody, Copeland, Giddings, Noone, Rice and Booth, 2013).

Generally, Law Clinics play significant roles in fostering student commitment to the development and sustenance of *pro bono* culture and practice (Giddings, 2013). Through functional law clinics, students' interests in having practical or "clinical experience" within the law school and participation in public interest lawyering is enhanced (Evans, 2001: 89; Rhode, 1999: 2420). Sandefur and Selbin (2009) through an empirical study found an interesting relationship between clinical legal education and the practical and professional development of law students (Ryan and Deci, 2000: 68). According to their finding, the "early-career lawyers' value clinical experience more highly than any other aspect of the formal law school curriculum in preparing them to make the transition to the profession" (Sandefur and Selbin, 2009: 58–59). Consequently, law schools and student law clinicians' *pro bono* schemes have developed

tremendously in Australia, (National Pro Bono Resource Centre, 2014) and also in the United States (Rhode, 2003: 421), where the American Bar Association (ABA) through the her review of law school accreditation regulations not only encouraged law students to participate in *pro bono* legal services, but also provided that they be given the opportunity to do so (Rhode, 1999; Recodification of Accreditation Standards, 1996). The growth was also aided by the efforts of the Pro Bono Law Students of Australia (De Brennan, 2005; Evans *et al,* 2017). In some jurisdictions, different law clinics and clinical programmes service different purposes to meet the need of the particular country or people. Thus, recognition of the capacity for clinical legal education to serve multiple purposes is very vital. Most importantly, it generates the need to balance student learning and community service, as well as the legal professional responsibilities of clinic teachers and supervisors (Gavigan, 1997), though not without occasional challenges depending on the specific model of engagement in such as service learning *pro bono* work in a particular country (Giddings, 2017: 26). Gavigan (1997) summed up the tension very effectively while describing the Parkdale Clinic of Osgoode Hall Law School, when she said, 'Put most baldly, the unspeakable question has been: are law students … learning on the backs of the poor? Put more politely, the question was framed not infrequently as one of "service vs. education". In Nigeria, for example, the principal challenge of law student *pro bono* work is the bar's (practicing lawyers) belief that students on *pro bono* work deny them of briefs and earnings.

Clinical legal education as a tested form of experiential legal education offers a more complete package in effective teaching and learning, albeit with the cost of intensive student supervision. This is because experiential learning can contribute in meeting a wide range of objectives not just for law students, but also for clients and law schools. In addition, CLE pedagogy generates both ample opportunities and challenges for the law student and the law teacher. It has the capacity to broaden and deepen student learning and reflective experience (Giddings, 2017: 11). It is therefore no longer in doubt that the service component of clinical legal education generates substantial community benefits while promoting student awareness of social justice and increased assimilation of *pro bono* values. Thus, many students after graduation continue to maintain and cherish the community service, ethical and *pro bono* culture imbibed during the law school days as an integral element of their law practice (Rhode, 2003: 420; Dickson, 2000: 33). In Nigeria, and some other jurisdictions (Noone, 1997; Giddings, 2013), the focus of clinical legal education programme in law faculties is more developmental than is the case for placement programmes in the practical legal training of the Nigerian Law School [NLS] (which placement and internship programme the NLS insists that law graduates must complete prior to admission into the legal profession). This ultimately translates to an enduring commitment to social justice and service. And from research and facts available in literature, clinical hands-on system of legal education and service learning share a strong commitment to social justice, and leads to rapid incremental learning and delivery as service learning involves students and law teachers working together to find solution to legal and social justice issues (Morin and Waysdorf, 2011–12: 561).

> Students can benefit from a sustained experience enabling them to develop understandings and approaches that foster ethical and reflective practice. Academics, supervisors and students involved in clinical programs can make a broad range of research-related contributions, especially where projects require a breadth of

> knowledge and expertise (Curran, 2004).[4] Clinicians are also likely to be able to engage effectively with the public policy dimensions of research issues and identify ways to utilise knowledge from other disciplines. Importantly, clinical programs also provide law schools with a natural point of focus for community service, ethical reflection and professional engagement activities (Giddings, 2017: 11).

Further on the advantages of Clinical Legal Education, Giddings posited that clinical pedagogy has immense potential to address the set of curriculum design principles identified by a Queensland University of Technology (QUT). He listed the following as the key principles for experiential learning put forward by the QUT project team:

a) supporting transition by promoting self-management, developing professional identity and supporting career planning and development;
b) providing integration and closure;
c) responding to diversity by enhancing students' capacity to engage with diversity in professional contexts;
d) promoting professional engagement;
e) recognising the experience's culminating nature by requiring students to make appropriate use of feedback and to reflect on their own capabilities; and
f) being regularly evaluated (Giddings, 2017; Kift, Sanson, Cowley and Watson, 2011).

Though in many law schools, clinical programmes are usually for senior law students, sometimes only for final and semi-final year class, it is advocated that clinical programmes can be extended to enable all law students participate and acquire the knowledge, skills and values inherent in the programme. It needs to be mentioned on a very important note that a very vital feature of the well-rounded law graduate, is the degree of their ethical virtue he/she has. In EBSU Law Clinic one important part of the *pro bono* training, whether for prison project, civil or criminal justice administration, is intense teaching on ethics and professional responsibility, but the extent to which such courses penetrate students' ethical consciousness is not what can be measured in the short run (Evans and Palermo, 2008: 252). Nevertheless, the results of an investigation of students' ethical awareness can be seen in Evans and Palermo (2008).

Law school research and community service is poorly funded just like other humanities; while medicine and natural sciences enjoy better funding (McCrimmon, 2003–04; Keyes and Johnstone, 2004). This makes *pro bono* work by law students most imperative. According to Giddings, the Dawkins reforms in Australia promoted the establishment of new law schools, but was not followed up with commensurate funding, and hence in the 1991 federal government allocation model, Law is placed in the lowest of five discipline funding clusters (Giddings, 2017: 15). Dawkins reforms to tertiary education in the late 1980s in

[4] For examples of student contributions to research, see Curran, L. (2004) 'Innovations in an Australian Clinical Legal Education Programme: Students Making a Difference in Generating Positive Change' *International Journal of Clinical Legal Education* Vol. 6(1), p. 162.

snowballed a significant increase in law programmes, described as 'avalanche of law schools' and law students over the past 27 years, and engendered the emergence of a range of new clinical programmes and *pro bono* clinical legal education social justice services. In the Council of Australian Law Deans (CALD) submission to the 2007 federal review of the Impact of the Higher Education Support Act 2003, concerning the Funding Cluster Mechanism and hands-on component to legal education, CALD emphasized that:

> It is now widely accepted that legal education should have a clinical or industry placement component, with students having hands-on experience with real clients; yet clinical programs are so expensive that only a handful of law schools have been able to fund them adequately, usually with substantial external support, to which many law schools do not have easy access (Council of Australian Law Deans, 2007; Higher Education Support Act, 2003; Funding Cluster Mechanism, 2007).

In summary, students' *pro bono* work both in civil and criminal justice administration in a well-developed clinical legal education curriculum can make vital contributions to law students' achieving each of the following six Threshold Learning Outcomes TLOs (2010):

a) understanding a coherent body of *knowledge*;
b) developing understandings and abilities related to *ethics and professional responsibility*;
c) developing relevant *thinking skills*;
d) developing research-related skills;
e) being able to communicate and collaborate; and
f) being able to *self-manage* (Australian Learning and Teaching Council, Learning and Teaching Academic Standards Project, Bachelor of Laws Learning and Teaching Academic Standards Statement, 2010).

EBSU Law Clinic Prison Work and Criminal Justice Administration

In the wake of the millennium, the Federal Government of Nigeria under President Olusegun Obasanjo, came up with his prison reform agenda, following his election in 1999. Non-governmental organizations and civil societies haven raised alarm on the increasing number of pretrial detainees in Nigerian prisons. Consequently, and as result of renewed efforts of the Government of Nigeria and development partners like OSJI, McArthur Foundation, USAID, and NGOs like NULAI-Nigeria, PRAWA, Prof Amari Omaka Public Interest Law Clinic, etc. multifaceted approach to prison services and consequent decongestion, the EBSU Law Clinic decided to make prison projects one of her cardinal projects since 2008 till date. EBSU Prison project was published in UK IJCLE in 2010. The report also specifically highlighted certain issues of concern and proffers recommendations to address identified challenges. This project is not only geared at assisting the inmates of the two federal prisons in the state to access legal service, but also to avail the clinical law students an opportunity to work and learn with real live clients, viz the awaiting trials and those wrongly detained.

The Objectives of the Prison Criminal Justice Project are:

a) To provide clinical law students the opportunity to meet and attend to live clients; interview, counsel; and learn therefrom

b) To expose the students to law in practice under supervision.

c) To expose the students to social justice issues and public service values through attendance to indigent prisoners/detainees.

d) To supplement existing legal aid available to prisoners/detainees (Omaka, 2014).

As already highlighted above, EBSU Law Clinic Prison and Access to Justice project was a child of circumstance, created to assist in the Federal Government of Nigeria and Development partners' multifaceted approach to prison decongestion. The project started over ten years ago, precisely in April 2008. Since then it has become one of the enduring cardinal projects of EBSU Law Clinic. This project is not only geared at assisting the inmates of the two federal prisons in the state (Afikpo and Abakaliki prisons) to access legal service, but also to give an experiential learning opportunity to law students to work and learn with real live clients detained in prisons.

In 2008/2009 academic session and other years following, the clinic carried a detailed scientific research on the legal, social, educational, health, vocational and other needs in the prisons. The sex, age, periodic and other classification / embodiments of prison inmates. The report/findings were forwarded to national and international development partners and sponsors of the project, Open Society Justice Initiative (OSJI) and Network of University Legal Aid Institutions (NULAI). Similarly, the Director of the Clinic, Prof Amari Omaka presented the study and findings at an international forum in Northumbria University, Newcastle Upon Tyne United Kingdom, and Stanford University California United States, where it received commendations.

ADMINISTRATION OF CRIMINAL JUSTICE ACT 2015 AND STUDENTS PRACTICE

The criminal justice system, before the enactment of the Administration of Criminal Justice Act (ACJA) 2015, rested under two major legal regimes, the Criminal Procedure Act and the Criminal Procedure Code for Southern and Northern Nigeria respectively. That legal regime had plethora of loopholes, gaps and inconsistencies, to the point that it became apparent that they could not address the rising needs of criminal justice in Nigeria's orchestrating delays and injustice in the system.

The Administration of Criminal Justice Act is a Federal Law passed by the National Assembly in 2015. The Act, otherwise, simply known as the "ACJA 2015" was signed into law in May 2015 by President Goodluck Ebele Jonathan to reduce court congestion and ensure speedy trial of accused persons facing criminal trials. By section 1(1) of the Act, its purpose is to ensure that the system of administration of criminal justice in Nigeria promotes efficient management of criminal justice institutions, speedy dispensation of justice, protection of the society from crime and protection of the rights and interests of the suspect, the

defendant and the victim. This objective is supported by section 36 (4) of the Nigerian Constitution, 1999, to the effect that whenever any person is charged with a criminal offence, he/she shall, unless the charge is withdrawn, be entitled to a fair hearing in public within a reasonable time by a court or tribunal. Thus, in *Alamieyeseigha vs Federal Republic of Nigeria* (2006) 16 NWLR (pt. 1004), the Court of Appeal held that:

> Since in criminal trial or proceeding as in the instant case, the courts are guided by public policy and the need for a speedy trial and fair hearing within a reasonable time as enjoined in section 36 (4) of the Constitution of the Federal Republic of Nigeria, 1999, it is the duty of all parties (including the Appellant) and the court to ensure that justice and the proceeding are not unnecessarily delayed in the present case.

Notable Provisions and Inroads Introduced by ACJA

The Act has brought several innovations and inroads to the Administration of Criminal Justice in Nigeria, some of which include;

a. *Timely Case Management and Expedited Trials*: The Act provides that any objection raised can only be considered along with the substantive issues and a ruling thereon made at the time of delivery of judgement; and no party shall be entitled to more than five adjournments from arraignment to final judgment provided that the interval between each adjournment shall not exceed 14 working days. In all circumstances, the court may award reasonable costs in order to discourage frivolous adjournments.
b. *It Gave life to Constitutional and other Statutory Provisions*: Section 36 CFRN provides for fair hearing within "a reasonable time". This a fundamental right provision but Nigerian legal system made nonsense of that provision until the arrival of the ACJA 2015. Similarly, section 40 of the Economic and Financial Crimes Commission (EFCC) and the 2013 Practice Directions of the Federal High Courts were similarly couched to fast track expeditious hearing. To forestall the ACJA suffering the same fate, the Act established the Administration of Criminal Justice Monitoring Committee. It is a 9-member Committee headed by the Chief Judge of the Federal Capital Territory. Section 470 of the ACJA, the Committee has the responsibility of ensuring effective and efficient application of the Act.
c. *Prohibition of De novo by Reason of Elevation*: When a High Court Judge is elevated to the Court of Appeal, he shall continue to sit as a High Court Judge only for the purpose of concluding any part-heard criminal matter pending before him conclude the same within a reasonable time.
d. *Compensation of Crime Victims*: One of the flaws of Nigerian criminal justice system is its largely retributive than restorative nature. Section 319 of the ACJA has addressed this ugly trend by widening the inherent powers of judicial officers to award costs, compensation and damages in deserving cases, especially to victims of crime. The court may within the proceedings or when passing judgment, order the convict to pay compensation to any person injured by the offence, irrespective of any other fine or other punishment that may be imposed.
e. *Minimisation of Unlawful arrest & Prison Decongestion*: Before the regime of ACJA, many persons were arrested and detained by the police without warrant. The Police even indiscriminately

arrested any person who 'has no ostensible means of sustenance' and who cannot give a satisfactory account of his/her activity. The police found good ground for their action and protection under the law in s.10 of the CPA. as a result, law enforcement agencies arresting relatives of the suspects, whether they are linked to the offence or not. Under the ACJA that practice is no longer protected by law. Sections 2 – 7 prohibits it and went ahead to set out the procedure to follow when arrests are carried out by the Police. Section 7 specifically prohibits arrest of any person in lieu of another offender.

f. *Prompt Notification of Arrest and Free Legal Aid*: Section 6 (2) ACJA is poised to the implementation of the following rights of the accused, by 2 mandating Police Officers or any other person to inform the suspect of his right to: remain silent or avoid answering any question until after consultation with his lawyer; consult a legal practitioner before making, endorsing any statement after arrest; free legal representation by the Legal Aid Council of Nigeria, where applicable. With the constitution of the 9-member ACJA Implementation Committee, it is expected that these rights will not suffer any setback as was the case under the CPA and CPC regime.

g. *Express Prohibition of Arrest in Civil Cases*: Although over the years, Nigerian legal system has never favoured arrest of persons in civil matters, yet that was the order of the day. The Police had a field day in pure civil matters among friends, neighbours, and business people. Section 8(2) of the ACJA provides in that a suspect shall not be arrested merely on a civil wrong or breach of contract. The Act obviously aims at curbing malicious instigation of arrests, detention or prosecution of another as a result of a civil case or an infraction which does not constitute a criminal wrong.

h. *Humane treatment of an Arrested Person*: Before the enactment of the ACJA 2015, the case of the accused smacked of nothing but cruelty and acute abuse of rights to human dignity. Section 8 ACJA provides that a suspect shall be accorded humane treatment, having regard to his right to the dignity of his person and not be subjected to any form of torture, cruel, inhuman or degrading treatment.

i. *Inventory of Property by the Police*: Section 10 of ACJA mandates the police upon arrest of a suspect to take inventory of all items or property recovered from them. Thereafter, the police officer and the suspect must duly sign the inventory. The arrested person or his lawyer or other person he permits shall be given a copy of the inventory. Subsequently, the police can be requested by the accused or the owner of the property to release the property on bond pending the arraignment of the suspect before a court.

j. *Electronic Recording of Confessional Statements*: Accordingly, section 15 (4) of the Act provides that where a person arrested volunteers to make a confessional statement; the police officer shall record the statement in writing and may record the making of the confessional statement electronically on a retrievable video compact disc or such other audio-visual means.

k. *Establishment of a Police Central Criminal Registry*: The Act provides for the establishment of a Central Criminal Records Registry in every state or police command to keep records for future investigation, prosecution and adjudication. Furthermore, ACJA makes it mandatory to transmit decisions of courts in all criminal trials to the Central Criminal Records Registry within 30 days after delivery of the judgment. This is meant to ease and of course, enable authorities and

Prosecutors to use this Registry to verify past records of suspects and even aspiring political office gunners.

l. *Recording of Arrests*: One of the most nagging problem beclouding the Nigerian criminal justice system is unlawful detention and prison congestion. Over 70% of these detainees are pretrial accused persons. Consequently, section 15(1)(2) of ACJA directs that a register of arrests containing the particulars shall be kept in the prescribed form at every police station or agency authorised by law to make arrests not exceeding 48 hours after arrest. The essence is to prevent unwarranted pre-trial detention by the police and other law enforcement agencies in Nigeria.

m. *Recording of Statement of Accused before their Counsel*: The common practice in Police Stations is extortion of confessional statement either with subtle or express threats or coercion. This has led to miscarriage of justice and many convicted for offences they did not commit. Section 17 of the ACJA provides that upon arrest, the accused's statement shall be taken in the presence of his lawyer or any other credible person of his choice.

n. *Quarterly Reports of Arrest & Arrest Database*: The Inspector-General of Police, the Commissioner and the head of every agency authorised by law to make arrests shall remit quarterly to the Attorney General of the Federation a record of all arrests made with full particulars of the person arrested. The Attorney-General of the Federation shall establish an electronic and manual database of all records of arrests at the Federal and State levels.

o. *Proscription of Lay Prosecutors*: Section 106 of the Act has laid to rest the issue of lay prosecutors as was endorsed by the Supreme Court in *FRN v. Osahon* (2006) 5 NWLR (PT 973) 361 at 406. It provides that prosecution of all offences in any court shall be undertaken by: The Attorney-General of the Federation or a Law Officer in his Ministry or Department Legal practitioner authorised by the Attorney-General of the Federation or A legal practitioner authorised to prosecute by law.

p. *Innovative Case Transfer Process*: Under the new law, the Chief Judge can transfer a case, where it appears to him that it will promote the ends of justice from one court to another. However, this power shall not be exercised where the prosecution has called witnesses. If, the Chief Judge is to exercise this power subsequent to a petition, he shall constitute an independent panel of three distinguished lawyers to investigate the matter within one week of receipt of such petition, and they shall submit the report within two weeks, before he acts on their recommendations.

q. *Registration of Bondspersons*: Before the arrival of the new law, many courts in Nigeria were beehive of activities with touts and all manner of persons parading themselves as bondmen. These self-employed persons are now regulated under the Act. Section 18 gives the Chief Judge the powers to make regulations for the registration and licensing of bondspersons. After registration, they will be licenced to undertake recognizance, act as surety or guarantee the deposit of money or any other bail conditions given by the court.

r. *Report to Supervising Magistrate*; Another milestone in ACJA 2015 is section 33. It provides that the head of a police station or agency authorised to make arrest shall on the last working day of every month report to the nearest Magistrate the cases of all suspects arrested and say whether or not the suspects have been admitted to bail.

s. *Magisterial Monitoring of Police Arrests*; For effective implementation of the provisions of sections 33 and 34, the Chief Magistrate, or any other magistrate in lieu, shall, conduct, at least once a month, inspection of police stations and other detention facilities within his jurisdiction. However, his power of inspection does not include the prison.

t. *Returns by Comptroller- General of Prisons*; Whereas the supervising powers of the Chief Magistrate doesn't extend to the prisons, ACJA 2015 made provision to monitor the activities of Nigerian Prions. Thus, the Comptroller-General of Prisons is required to make returns every three months to the Chief Judges, President of the National Industrial Court and the AG-Federation of all persons awaiting trial held in custody for a period beyond 180 days from the date of arraignment. The returns shall contain: 1. The name of the suspect held in custody or Awaiting Trial 2. Passport photograph of the suspect 3. The dates of his arraignment or remand 4. The date of his admission to custody 5. The particulars of the offence 6. The courts before which he was arraigned 7. Name of the prosecuting agency 8. Any other relevant information. Upon the receipt of such return, the head of court or AG shall take steps to address the issues raised smooth Administration of Criminal Justice in Nigeria.

u. *Sentencing Guidelines*; The Act has provided that the court shall, in pronouncing sentence, consider the following:

- the objectives of sentencing, including the principles of reformation and deterrence;
- the interest of the victim, the convict and the community;
- appropriateness of non-custodial sentence or treatment in lieu of imprisonment; and
- previous conviction of the convict.

v. *Alternatives to Custodial Sentence and Prison Decongestion*; Worthy of commendation is the provision made by the Act for alternative regimes of sentencing. According to the Act, the sentences which may be applied by the court include compensation or damages, restitution, restoration of property, probation, suspended sentence, community service, parole, deportation.

Notwithstanding the provisions of the Act, s. 460(3) prohibits that application of suspended sentences for serious offences such as use of arms, sexual offences or offences which the punishment exceeds imprisonment for a term of 3 years.

w. *Plea bargain*; Section 270 of the Act provides that the defence can write to the Prosecution for plea bargain. The prosecution may enter into plea bargain with the defendant, with the consent of the victim or his representative during or after the presentation of the evidence of the prosecution, but before the presentation of the evidence of the defence. Many perceptive commentators have hailed this as a welcome development

x. *Women Sureties*; Section 167 (3) of the Act has cured the long defective practice where women were constantly denied the right to stand as sureties for the purpose of bail. Section 167 (3) provides that a person shall not be denied, prevented or restricted from entering into any recognizance or standing as surety for any defendant or applicant on the ground only that the person is a woman.

y. *Witness Protection*; Section 232 of the Act permits witnesses to some offences to give evidence in camera. These include sexual related offences, Terrorism offences, offences relating to

Economic and Financial Crimes, Trafficking in Persons and related offences, etc. Under this provision, the name and identity of the victims of such offences or witnesses shall not be disclosed in any record or report of the proceedings and it shall be sufficient to designate the names of the victims or witnesses with a combination of alphabets. It further provides that where in any proceedings the court determines it is necessary to protect the identity of the victim or a witness the court may take any or all of the following measures:

- receive evidence by video link.
- permit the witness to be screened or masked.
- receive written deposition of expert evidence.
- any other measure that the court considers appropriate in the circumstance.

z. *Payment of Witness Expenses*; It provides in s. 251 that where a person attends court as a state witness, the witness shall be entitled to payment of such reasonable expenses as may be prescribed. Accordingly, where a person attends court as a witness to give evidence for the defence, the court may in its discretion on application, order payment by the Registrar to such witness of court such sums of money, as it may deem reasonable and sufficient to compensate the witness for the expenses, he reasonably incurred in attending the court, in line with the provisions of s.252.

What is the Relevance of The ACJA Innovations in Clinic Work?

The ACJA contains 495 sections set out in 49 parts. It introduced the above innovations, which aims to enhance the efficiency of the criminal justice system in the Nigeria. Virtually all law clinics in Nigeria focus significant part of their *pro bono* work on criminal justice probably due to the high rate of pre-trial detention and the perceived lack of access to justice in Nigeria which is currently at 51,141(68%) (Prison. Gov. Ng, 2018). Hence, the clinics are involved in prison work and access to justice for deserving detainees.

Understanding the helpful innovations introduced by ACJA will assist our clinicians in facilitating access to justice to prison inmates and advocating for the release of those detained beyond the period provided by the law. This is because, the implementation of the Act is targeted, *inter alia,* at redeeming the criminal justice from the grip of the powerful and giving access to justice to the poor. The following are ways the clinics in Nigeria can use the ACJA as a tool to fulfil this mandate stated above.

1. **Stakeholder Engagement with ACJA Actors**; the clinicians can organize seminars, workshops and symposia to engage the various stakeholders in the administration of criminal justice to see to the domestication of this Act in the various States in Nigeria and to see to its full implementation.
2. **Students' Training on the ACJA**; the law clinics will be a veritable ground to train students who will eventually become lawyers on the provisions and workings of this relatively new Law.
3. **Community Enlightenment on The Provisions of the ACJA**; since the clinics carry out various enlightenment programmes and justice education, when the people know the provisions of this act it will empower them to demand for their rights and enshrined in the laws.
4. **Pre-Trial Detainee Interviews**; by the provision of the Legal Aid Council Act, law clinics have been listed as one the legal aid providers in Nigeria, i.e. s.17 Legal Aid Act, 2011. Armed with this Act,

the clinics are better equipped to interview pre-trial detainees with a view to providing *pro-bono* services to the indigent.

5. **Engaging with The Magistrates to Determine Who to Release During Visits**; the Act provides that the Chief Magistrate shall visit periodically detention centres within jurisdiction to released people who have been detained beyond the maximum period allowed. The magistrates are often times busy with the bulk of cases in courts and as such can utilize the law clinics in monitoring the detention facilities to determine persons who have over stayed the maximum period and allowed and this will be submitted to the magistrate who upon such visits will release them.
6. **Help to Monitor the Provision for Day to Day Trial and Other Provisions That Deal with Courts and Detention Agencies**; the clinics by daily court visits and survey can help the ACJMC in monitoring the compliance with day to day trial as provided by the Act.
7. **Gather Data to Help the Monitoring Committees**; due to the paucity of funds available to the monitoring Committee, they clinics could serve as data collectors to help monitor the various agencies implementing the ACJA.
8. **Link Prisoners with Pro-Bono Lawyers**; the prisoners who may not have the fee for lawyers and have been interviewed by the clinicians can be linked with *pro bono* lawyers who will do the litigation for the inmates.
9. **Do the Paper- Work for Lawyers**; the drafting of documents for the cases could be done by the clinics. This will not only save the *pro bono* lawyer time but will also help the student in perfecting his skills in preparation for practice upon graduation.

With all these done, we could use this innovation of the ACJA to start a conversation for student practice in lower courts in Nigeria as it is in some other climes.

Judicial Attitude and ACJA and Challenges of the Act

The courts play a vital role not only in securing access to justice but also in effective implementation of the Administration of Criminal Justice Act. The Act itself recognizes this vital role of the courts when it stated in section 1 (2) that the courts, law enforcement agencies and other authorities or persons involved in criminal justice administration shall ensure compliance with the provisions of the Act for the realization of its purposes.

In support of this, the courts have at various times given effect to the provisions of the Act since its passage as well as similar provisions or enactments preceding the Act. Section 5 of the Act provides that a suspect may not be handcuffed, bound or be subjected to restraint except in the following circumstances namely that there is reasonable apprehension of violence or an attempt to escape; the restraint is considered necessary for the safety of the suspect; or by order of a court. Hence, the court in *Ahamba vs. State (1992) 5 NWLR (pt. 242) 450* frowned at a practice where the police arrested a suspect with his parents who were no suspects, brutally assaulted the suspect and while in a moving police vehicle scantily dressed shot a bullet into the suspect's head and took him to Queen Elizabeth Hospital, Umuahia for treatment. On

admission for the injury inflicted on him the day of the arrest, the police demanded a statement from him and while on sick bed, bleeding in pain with bullet stuck on his head.

Section 6 of the Act mandates that a suspect be informed of the reason for his arrest save where he is in the actual course of committing the offence or is pursued immediately after committing the offence. This provision is grounded in section 35 (3) of the 1999 Constitution stating that any person who is arrested or detained shall be informed in writing within twenty-four hours, and in a language he understands, and he should be made to know the facts and grounds for his arrest or detention. In *Rufai vs. State* (2001) 7 SCNJ 122, the Supreme Court held that a trial may be voided where it is not shown that an accused person was informed of the nature of his offence in a language that he understood. And that there should be a written evidence of his having been so informed especially where the language the accused person speaks differs from that of the court. But in *Ndukwe vs. LPDC* (2007) 5 NWLR (pt. 1026)1/ (2007) LPELR – 1978 (SC), the court held that the information may not necessarily be in writing as when a police officer, in the course of his duties, arrests a person for an offence, he is duty bound to inform him of the charge for which he stands arrested in a language that he understands and the detail of the nature of the offence.

By section 7 of the Act, a person cannot be arrested in place of a suspect. There is no vicarious liability in the realm of criminal law. Liability for crime is personal. Therefore, arrest of a relative, spouse or friend for an offence committed by another is in breach of the Administration of Criminal Justice Act. In *Adeoye vs. Olorunoje* (1996) 2 MAC 256*,* the court held that it is not the law that a master is responsible for the crime of his servant. In *All Peoples Congress vs. Peoples Democratic Party* (2015) 15 NWLR (pt. 1481) 1, the court held that the Respondents could not be found answerable for the crimes alleged in the petition to have been committed by their unknown soldiers and policemen. Again, in *Sani vs. State* (2015) 15 NWLR (pt. 1483) 522, the court held that it is better that a guilty person should go free than for an innocent person to be convicted.

Furthermore, sections 30, 31, 32, 158 and 161 deal with various classes of bail available to a suspect or accused person in custody. The sections highlight the necessity of setting the suspect or accused free to enable him take practical steps to defend the allegations against him. It is on this account that the court in *Shagari vs. COP* (2005) All FWLR (pt. 262) 450, held thus:

> This court or indeed all courts of this country will be quick to give relief against any improper use of power especially by the police as is evident in the instant case leading to this appeal. The said abuse of power by the police has resulted in the continual unlawful detention of the appellants. It is therefore unjust having regard to the fact that some other arrested suspects by the police are somewhere breathing the air of freedom with or without police bail.

Again, these provisions are backed by section 35 of the 1999 Constitution relating to the right to personal liberty. In this connection, by section 35 (6), any person who is unlawfully arrested or detained shall be entitled to compensation and public apology from the appropriate authority or person.

In pursuit of the notion of access to justice, the Act in sections 88, 89, 90, 91 and 92 empowers any person or complainant who is injured by means of any criminal act or breach to raise a complaint to the police or to the court, which complaint may be oral or written. This ensures that people have unfettered access to the courts and law enforcement institutions when a crime has been perpetrated against them. In *Salihu & Ors vs. RTEAN & Ors* (2013) LPELR-21820, the court conceptualized a complaint to mean an allegation made orally or in writing to a court with a view to it taking action that some people whether known or unknown have committed an offence. The police investigate the complaint and the court seized with jurisdiction adjudicates the same. Specially, note ought to be taken of sections 98 and 99 which mandate the Chief Judge or any other Judge to transfer a case to another court if such action would promote the ends of justice or be in the interests of public peace. This is especially significant in situations where the continuance of the trial in a particular court would most certainly lead to a miscarriage of justice.

To further promote access to justice, sections 251 and 252 of the Act mandate the Registrar of Court to pay reasonable expenses to witnesses who testify for either the complainant or the accused; and by section 254, the Registrar is to make the payment out of the relevant vote appropriated by the Judiciary. This is very welcome because it lifts the financial burden of litigation partly off the shoulders of those who complain and those who defend, thereby making justice more readily accessible to both parties.

Again, sections 415 and 452 relating to punishment for pregnant women and children who are convicted are worthy of note. Pursuant to section 415, where a woman convicted of a capital offence is found to be pregnant, the sentence of death shall be passed, but under section 404 the execution of the sentence shall be suspended until the baby is delivered and weaned. By section 452 (1), where a child is alleged to have committed an offence, the provisions of the Child Rights Act shall apply to him, and by section 405 of the Administration of Criminal Justice Act, where a convict who, in the opinion of the court, had not attained the age of 18 years at the time the offence was committed is found guilty of a capital offence, sentence of death shall not be pronounced or recorded against him. Rather, the court shall sentence the child to life imprisonment or to such other term as the court may deem appropriate. These provisions by the Act relating to children convicted of capital offences have been given judicial authority in *Orisakwe vs. State* (2004) 12 NWLR (pt. 887) 258 and Sundry other cases.

Challenges Facing The ACJA

The Problem of Plea Bargaining: The plea bargain is a veritable caseload management tool in the hand of prosecutors. It is widely deployed in several jurisdictions around the world, including advanced societies.

However, the application of plea bargaining in this country has often generated heated arguments in this country. That notwithstanding the legislature has, and I think rightly incorporated the plea bargain into the ACJA.

The Problem of Holding Charge: The Administration of Criminal Justice Act (ACJA) 2015, particularly Sections 293-299, gives an open cheque to Magistrates to order the remand without trial of anybody who is the subject of investigation.

Presently, law enforcement agents and the magistrate's court have been hiding behind these sections to hold an accused forever in the name of "investigation. Sections 293-299 of the ACJA violently violate the clear provisions of Section 35(4) and (5) of the Constitution, they presumptuously also create or constitute a "holding charge", which has been declared by the highest court of the land, to be patently illegal, unconstitutional, null and void.

CONCLUSION

The purpose of the ACJA 2015 is to ensure efficient management of criminal justice institutions, speedy dispensation of justice, protection of the society from crime and protection of the rights and interests of the suspect, the defendant and the victims of crime. Having examined these innovations, it is apparent that the provisions of the Act if followed to the latter will bring about a tremendous change in the Administration of Criminal Justice in Nigeria as applicable in many advanced democracies that have similar legal regime in criminal justice prosecution, and states within jurisdiction who are already applying them, like Lagos, FCT Abuja, Ondo State, Edo, Anambra State, Enugu, Ebonyi, Etc. Its dissemination and strict application will eventually reduce the rate of pretrial detention while giving quality access to Justice in Nigeria. The entire system will definitely be improved and the inroads if used by the clinics will further enhance the Knowledge, skills and values of the students. In other words, the strict application of ACJA 2015 will ultimately reduce the rate of pretrial detention while giving quality access to Justice in Nigeria; and law students being part of its implementation will be best beneficiaries as it will sharpen their knowledge, skills and values in criminal justice administration.

REFERENCES

Australian Learning and Teaching Council, Learning and Teaching Academic Standards Project, Bachelor of Laws Learning and Teaching Academic Standards Statement, December (2010) perma. cc/X93F-GHM5.

Blacks (1990), *Black's Law Dictionary, 6th Edition,* St. Paul, Minn: West Publishing Co:.254

Brayne, H., Duncan, N. and Grimes, R. (1998) *Clinical Legal Education: Active Learning in Your Law School* Blackstone Press, 2.

Campbell, S. (1991) 'Blueprint for a Clinical Programme' (1991) *Journal of Professional Legal Education*, Vol. 9(2):121-122.

Council of Australian Law Deans (2007) Council of Australian Law Deans, Submission to the Review of the Impact of the Higher Education Support Act 2003: Funding Cluster Mechanism, 26 February 2007, 2.

Curran, L. (2004) 'Innovations in an Australian Clinical Legal Education Programme: Students Making a Difference in Generating Positive Change' *International Journal of Clinical Legal Education* Vol. 6(1): 162.

De Brennan, S. (2005) 'Rethinking Pro Bono: Students Lending a Legal Hand' *Legal Education Review* Vol.15.

Dickson, J. (2000) 'Clinical Legal Education in the 21st Century: Still Educating for Service?' *International Journal of Clinical Legal Education* Vol. 1: 33.

Evans, A. (2001) 'Efficacy Beyond Reasonable Doubt?' *Law in Context* Vol. 19:.89.

Evans, A. and Palermo, J. (2008) 'Almost There: Empirical Insights into Clinical Method and Ethics Courses in Climbing the Hill towards Lawyers' Professionalism' *Griffith Law Review* Vol. 17: 252.

Evans, A., Cody, A., Copeland, A., Giddings, J., Noone, M.A., Rice, S. and Booth, E. (2013) *Best Practices: Australian Clinical Legal Education* Government of Australia, Office of Learning and Teaching, at perma.cc/2J6E-ZMQX.

Evans, A., Cody, A., Copeland, A., Giddings, J., Joy, P., Noone, M.A. and Rice, S. (2017) *Australian Clinical Legal Education Designing And Operating A Best Practice Clinical Programme In An Australian Law School* Australia, ANU Press The Australian National University Acton ACT 2601: 27-28.

Gavigan, S. (1997) 'Twenty-five Years of Dynamic Tension: The Parkdale Community Legal Services Experience' *Osgoode Hall Law Journal* Vol. 35(3): 443, 457.

Giddings, J. (1999) 'A Circle Game: Clinical Legal Education in Australia' *Legal Education Review* Vol. 10(1): 34-35.

Giddings, J. (2013) *Promoting Justice Through Clinical Legal Education* Melbourne, Justice Press: 64–67.

Giddings, J. (2017) in *Australian Clinical Legal Education Designing And Operating A Best Practice Clinical Programme In An Australian Law School*, Australia, ANU Press The Australian National University Acton ACT 2601: 27-28.

Identifying Current Practices in Clinical Legal Education, Regional Report: New South Wales and Australian Capital Territory, 12–13 (at perma.cc/FU7X-5TNV).

Keyes, M, and Johnstone, R. (2004) 'Changing Legal Education: Rhetoric, Reality, and Prospects for the Future' *Sydney Law Review* Vol. 26(4): 556.

Kift, S., Sanson, M., Cowley, J. and Watson, P. (eds), (2011) *Excellence and Innovation in Legal Education* LexisNexis Butterworths.

Learning and Teaching Academic Standards Project, 'Bachelor of Laws Learning and Teaching Academic Standards Statement, December 2010', at perma.cc/X93F-GHM5: 10.

McCrimmon, L. (2003–04) 'Mandating a Culture of Service: Pro Bono in the Law School Curriculum' *Legal Education Review* Vol. 14(1): 53, 72–73.

Morin, L. and Waysdorf, S. (2011–12) 'The Service-Learning Model in the Law School Curriculum' *New York Law School Law Review* Vol. 56: 561.

Noone, M. A. (1997) 'Australian Community Legal Centres: The University Connection' in Jeremy Cooper and Louise Trubek (eds), *Educating for Justice: Social Values and Legal Education* Ashgate, 267.

Omaka, C. A. (2014) 'Decongesting Prisons in Nigeria: the EBSU Law Clinic Model' *International Journal of Clinical Legal Education.* University of Northumbria. Issue 20 Vol.11(1): 533-562.

Recodification of Accreditation Standards 302 (1996).

Rhode, D. (1999) 'Cultures of Commitment: Pro Bono for Lawyers and Law Students' *Fordham Law Rev*iew, Vol. 67(5): 2415 - 2447.

Rhode, D. (2003) 'Pro Bono in Principle and Practice' *Journal of Legal Education*, Vol. 53(3): 413-464.

Ryan, R. and Deci, E. (2000) 'Self-Determination Theory and the Facilitation of Intrinsic Motivation, Social Development, and Well-Being' *American Psychologist* Vol.55(1): 68.

Sandefur, R. and Selbin, J. (2009) 'The Clinic Effect' *Clinical Law Review* Vol. 16: 57. 75

Smith, L. (2003–04) 'Why clinical programs should embrace civic engagement, services learning and community-based research' *Clinical Law Review* Vol. 10: 723, 725–27.

Summary of Inmate Population By Convict and Awaiting Trial Persons as at 12th November 2018 http://www.prisons.gov.ng/statistics accessed on 5/12/2018.

The Australian Learning and Teaching Council (ALTC) implemented the Threshold Learning Outcomes project. See www.olt.gov.au/system/files/altc_standards.finalreport.pdf.

The National Pro Bono Resource Centre 'The Clinic Effect' www.nationalprobono.org.au/. Accessed 12 December 2014.

Threshold Learning Outcomes (TLOs) for Juris Doctor (JD) graduates and for a Master's degree (extended) qualification. See perma.cc/KD4J-VQXF.

Yakasai, M. (2016) *Meaning of a Legal Clinic*, https://en.wikipedia.org/wiki/Legal_clinic accessed on 5/12/2018.